

Letter of Findings Number: 02-20130276
Adjusted Gross Income Tax
For Tax Year 2012

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ISSUES

I. Adjusted Gross Income Tax—Adjustment.

Authority: IC § 6-3-2-1; IC § 6-8.1-5-1.

Taxpayer protests the imposition of additional adjusted gross income tax.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state business with Indiana operations. As the result of a review of Taxpayer's 2012 Indiana adjusted gross income tax ("AGIT") return, the Indiana Department of Revenue ("Department") determined that Taxpayer had under-reported its 2012 Indiana AGIT. The Department therefore issued a proposed assessment for AGIT, penalty, and interest for 2012. Taxpayer protested the proposed assessment. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Adjusted Gross Income Tax—Adjustment.

DISCUSSION

Taxpayer protests the imposition of AGIT for the tax year 2012. The Department determined that additional AGIT was due after reviewing Taxpayer's 2012 Indiana AGIT return and reversing a modification which Taxpayer had made. Taxpayer protests that the modification was properly made and that no additional Indiana AGIT is due. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The adjusted gross income tax is imposed under IC § 6-3-2-1. Taxpayer protests that it changed from a cash accounting method in 2011 to an accrual accounting method in 2012. The change in accounting methodology resulted in additional income, which had been generated in prior years, being reported on Taxpayer's 2012 federal income tax return. Taxpayer protests that it had no Indiana operations prior to 2012 and that income generated in prior years would not be applicable to Indiana AGIT for 2012.

Taxpayer was unable to provide documentation to establish when it began its Indiana operations. Since there is no evidence that Taxpayer did not have an Indiana filing requirement for years prior to 2012, the Department is unable to agree with Taxpayer that it did not have Indiana AGIT for years prior to 2012. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

II. Tax Administration - Negligence Penalty.

The Department issued proposed assessments for income tax and the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay

a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c).

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayer's protest is denied on Issue I regarding the imposition of additional AGIT. Taxpayer's protest is sustained on Issue II regarding the imposition of negligence penalty.

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